REMARKS

In the Office Action, Claims 1-23 were allowed and Claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatenable over U.S. Patent No. 6,104,938 to Huiku et al. in view of U.S. Patent No. 5,725,480 to Oosta et al. In this response, Applicant is canceling Claims 25-31 without prejudice, and Applicant expressly reserves the right to pursue the subject matter of such claims in a future continuation application(s) and to present corresponding arguments with respect to the allowability of such claims over the cited art.

With respect to independent Claim 24, Applicant submits that the prior art fails to disclose or render obvious the stipulated apparatus. In particular, Applicant submits that neither Huiku et al. nor Oosta et al. provide any suggestion or motivation for combining the teachings thereof in the manner asserted by the Examiner. Moreover, Applicant submits that even if such combination could be properly made, the combination would fail to yield the arrangement of independent Claim 24. In this regard, Applicant notes that Claim 24 includes:

"- memory means for storing reference data indicating nominal characteristics under which said predetermined calibration has been applied to output signals free of filtering by living tissue,

- first compensation means, operatively connected to the memory means and the detector means, for dynamically determining tissue-induced changes in the nominal characteristics based on said output signals of said detector means,

- second compensation means, operatively connected to the first compensation means, for defining a subject-specific calibration by correcting the predetermined calibration on the basis of the tissue-induced changes . . .."

The combination of such features in Claims 24 yields an apparatus that dynamically changes a predetermined calibration based upon tissue-induced changes in "nominal characteristics" for a given subject.

Huiku et al. and/or Oosta et al. fail to teach the noted combination. Indeed, Huiku et al. fails to provide for any type of patient-specific compensation and Oosta et al. merely teaches patient specific compensation based upon an off-line measurement(s). In the later regard, Oosta et al. provides for the measurement of one or more patient skin parameters and the storage of such measurement(s) for subsequent use in an algorithm to purportedly reduce correlation error. Such an arrangement does not include a compensation means that is operatively connected to a memory means and a detector means for dynamically determining tissue-induced changes in "nominal characteristics" based on output signals of the detector means as per the invention of Claim 24.

In view of the foregoing, Applicant submits that all claims are now in condition for allowance and such favorable disposition is earnestly solicited. Should the Examiner believe that a telephone interview would facilitate further handling of the case, the Examiner is requested to contact the undersigned attorney.

Respectfully submitted,

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By: _____
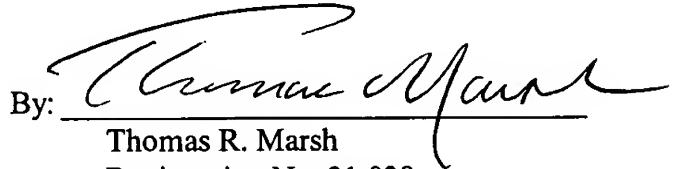
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